IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 810 OF 2005
IN
SUIT NO.2470 OF 2002

Housing Development Corpn.Ltd. ..Plaintiff.

V/s.

Express Industrial Services
Pvt.Ltd. & Ors. ..Defendants.

And

The Court receiver,
High Court,Bombay. ..Respondent.

Mr.Pravin Samdani i/b Wadia Ghandy & Co. for Plaintiff.

Mr.Devanshu Desai for defendant No.1 to 3.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 17, 2005.

P.C. :

1. Request for adjournment for filing reply, as made on behalf of the defendant No.1,2 and 3 is rejected, because the said defendants have been duly served as back as on 5th July, 2005. No good reason is forthcoming as to what prevented them to file affidavit in reply within time, as the chamber summons was made returnable on 29th July, 2005. Besides it is seen that matter has already been adjourned once on 1st August, 2005. Hence requested

for adjournment for filing reply is rejected. Matter to proceed on merits.

2. Heard counsel for the parties on merits. The only objection pressed into service on behalf of the defendant Nos.1, 2 and 3 during the argument, is that the order passed by this court requiring the defendant to deposit the amount is pending challenge in appeal before the Division Bench of this court. It is however, agreed that there is no order of stay in favour of the defendants passed by the Division Bench of this Court. In other words, defendants have already complied with the directions given by this court on the earlier occasion and have deposited certain amounts, which are lying in the suit account to the extent of Rs.17,50,000/-. If it is so, in my opinion, it will be appropriate to permit the plaintiff, which is a financial institution of good standing, to withdraw the said amount of Rs.17,50,000/-, lying in the suit account of this court, on condition that the same will be brought back forthwith, if so ordered in appeal pending before the appellate bench. This direction is necessitated, as the suit claim of the plaintiff is far exceeding Rs.5 crores. Besides the plaintiff is in a position to comply with the requirement of

depositing the amount, if so ordered by the appellate court.

3. Accordingly, this application succeeds in terms of prayer clause (a) on the above condition with costs.

4. At this stage, counsel for the defendant Nos.1, 2 and 3 prays that operation of this order be stayed. I see no basis to grant this prayer. Hence prayer for stay is rejected.